

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

---

In the Matter of:	:	
Climax Post Office	:	Docket No. A2013-3
Climax, Georgia 39834	:	

---

**PARTICIPANT MORGAN WOLAVER'S  
REPLY TO THE UNITED STATES POSTAL SERVICE**  
(August 7, 2013)

**SUMMARY AND PROCEDURAL POSTURE**

Participant Morgan Wolaver filed what is clearly labeled a "Request for Review"<sup>1</sup> presenting a new appeal of the closing of the Climax Post Office.<sup>2</sup> Instead of responding to the Participant Statement and accompanying Request for Review, the Postal Service, under the mistaken assumption that the Participant must not be familiar with Commission practice, first makes two "strawman" mischaracterizations of the Request.

First, the Postal Service argues that this new appeal is a late filing in the Climax City Clerk's previous appeal. It is not.

Next, the Postal Service argues that this new appeal might be a request for reconsideration of a final order. It is not.

Finally, the Postal Service states that if the Request for Review is a new appeal (which it is), the Commission should dismiss it because regulations issued by the Postal Service determine Commission jurisdiction. We respectfully, but strongly, disagree. Congress and federal statutory law, not Postal Service regulations, determine the Commission's review authority, and Congress intended that the Commission's review authority be tied to the reality of a post office closing and the impact that has on a community.

---

<sup>1</sup> See the title: "Memorandum in Support of Request for Review," filed with the Commission on July 23.

<sup>2</sup> The Participant had no control over the fact that his new appeal was docketed under the docket number for the appeal previously filed by the Climax City Clerk, Docket No. A2013-3. Our preference would have been for our new appeal to have a new docket number.

## STATEMENT OF FACTS

The one-and-a-half page “Factual Background” provided by the Postal Service is incomplete and inaccurate.

The December 4, 2012, letter the Postal Service claims to have sent to customers was never sent.<sup>3</sup> Climax City Clerk Karen Toole has documented that no one in Climax ever received this letter. (See, the Memorandum in Support at page 4, and Exhibit B to that Memorandum at pages 4-5.) The more complete facts concerning the closure of the Climax Post Office are set out in Participant’s Memorandum.

The relevant and basic facts are that the Postal Service completely terminated negotiations on the only building in Climax which might serve as a post office (since it was built to Postal Service specifications) in November, 2012. No new post office building in Climax is feasible (See the affidavit of Mr. Wolaver, at page 4 ). The Postal Service created an inadequate VPO to replace the Climax Post Office. And the Postal Service permanently closed the Climax Post Office eight months ago, on November 1, 2012.

While it is true that the Postal Service has dawdled on issuing a “written determination” to close Climax, it is equally true that the Postal Service has been shown, by its unequivocal acts and unilateral decisions, to have made the determination to permanently close the Climax Post Office.

Were the Postal Service’s position on the Climax Post Office accurate, the Postal Service could, in any communities it chooses, simply create reasons to suspend those post offices,<sup>4</sup> keep them suspended for so long as it wished, and then, well after the last business of the Postal Service was conducted at that location, and long after the impact of the post office’s closing on the community had occurred, decide to finally issue a “written determination” to close the post office. Congress, in drafting the statutes covering closings and consolidations, clearly did not intend to allow the Postal Service to control the Commission’s jurisdiction, nor did it intend to allow the form of a permanent closing to control the substance of review.

---

<sup>3</sup> The Postal Service relies on this letter in its instant Response, at page 5, and also relied on it in its previous Motion to Dismiss the appeal filed by the Climax City Clerk.

<sup>4</sup> It is hardly hypothetical to note that many small post offices are “suspended” each year, never to reopen.

The Climax Post Office is closed. The Postal Service knows it. The Commission knows it. The public knows it, and has been suffering from the negative impact for the last eight months. This closing is ripe for Commission review.

## LEGAL ANALYSIS

### **A. The Jurisdiction of the Postal Regulatory Commission is Not Determined or Limited by Postal Service Regulations.**

The Postal Service correctly noted that “pursuant to 39 U.S.C. § 404(d)(5), [a] determination of the Postal Service to close or consolidate any post office may be appealed by any person served by such office to the Postal Regulatory Commission within 30 days after such determination is made available to such person.” (Postal Service Response at 5.) However, the Postal Service then states that, pursuant to its regulations and its Postal Service Handbook, this Honorable Commission cannot review a closing until the Postal Service posts a “final determination.” This is not what Congress provided.

In contrast, section 404(d)(4) states that the “Postal Service shall take no action to close or consolidate a post office until 60 days after its written determination is made available to persons served by such post office.” That section is a limitation *on the Postal Service’s ability* to shut the doors of a post office, *not on the ability of the Commission* to review a closure. Indeed this section would seem to implicitly sanction Commission action where the Postal Service has closed a post office long before making its written determination available to the public. This could occur in a situation like the present, where the Postal Service, relying on its own determination to end its lease, simply declares that a closed post office is “suspended” rather than “closed.”

The distinction is important: Congress wanted the Postal Service to make written and public determinations, but also wanted to make sure that the Commission had independence to review when post offices were, in fact, closed.<sup>5</sup>

In terms of the Commission’s jurisdiction, Congress, in section 404(d)(5) provided that any “determination of the Postal Service to close... any post office may be

---

<sup>5</sup> Should Congress have wished to limit Commission jurisdiction to only cases where the Postal Service had issued a “written determination” it would have stated “following the written determination by the Postal Service...” or “written determinations by the Postal Service to close....” It did not choose either of these alternatives.

appealed.. to the Postal Regulatory Commission....”<sup>6</sup> Congress thus deliberately tied the Commission’s review jurisdiction to the “determination of the Postal Service to close,” and not to the Postal Service’s “written determination.”<sup>7</sup> Whether a post office is closed and whether the Postal Service has made a determination to close a post office can be determined by the Commission on the basis of the facts of the case, and not solely on a mere paperwork formality. If that were not the case, then the Postal Service could avoid Commission jurisdiction just by simply failing to release a “written determination,” surely a result Congress did not intend.

Just because the Postal Service has not put its determination in writing does not mean that the determination has not been made. It is past time for the Commission to address this issue. The Postal Service should not be allowed to use the suspension process to bypass the closure process, as it has for some years. A reasonable time limit must be placed on suspensions by the Commission, and the process for public input should not be avoided or made meaningless by indefinite suspensions.

### **B. By Any Reasonable Definition, the Postal Service Has Determined to Close the Climax Post Office.**

The facts related to the permanent closing of the Climax Post Office have been previously provided. (See, Memorandum in Support of Request for Review, and its Exhibits A and B.) All the actions which caused the permanent closing of the Climax Post Office were the result of deliberate determinations made by the Postal Service. (*Id.*) No “Death Certificate” issued by a postal coroner is necessary to determine that the Climax Post Office is dead.

The Postal Service’s determination to permanently end lease negotiations for the only suitable building in Climax shows the “firm or fixed intention to achieve a desired end.”<sup>8</sup> The Postal Service’s creation of a replacement VPO demonstrated a “direction

---

<sup>6</sup> The Postal Service’s determination was made unavoidably clear to its Climax customers after the Postal Service closed negotiations, transferred functions to Whigham, opened a VPO, and let 8 months pass without change in any of these actions.

<sup>7</sup> “To hold otherwise would be to exalt artifice above reality and to deprive the statutory provision in question of all serious purpose.” Gregory v. Helvering, 293 U.S. 465, 470 (1935).

<sup>8</sup> This is the Merriam-Webster Dictionary definition of “determination.”

or tendency to [the] desired end”<sup>9</sup> of eliminating the Climax Post Office. And the transfer of all regular postal functions and services to the smaller and inadequate Whigham Post Office illustrates “an act of decision”<sup>10</sup> to permanently close Climax. In short, the Postal Service has “decided definitely and firmly”<sup>11</sup> that the Climax Post Office is closed.

The Postal Service’s clear and evident “determination” is subject to appeal to, and review by, this Honorable Commission.

### **CONCLUSION**

For all of the foregoing and previously provided reasons, we respectfully request that this Honorable Commission accept this new appeal of the closing of the Climax Post Office and review that determination pursuant to section 404(d)(5) of title 39, United States Code.

Respectfully submitted this 7th day of August, 2013.

/s/ Hal Hughes

---

Harold Hughes  
Michelle Bushman  
Ford & Huff LC  
10542 South Jordan Gateway, Suite 300  
South Jordan, Utah 84095  
801-407-8555  
[hal.hughes@fordhuff.com](mailto:hal.hughes@fordhuff.com)

*Counsel for Morgan Wolaver*

---

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*